

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 AT SEATTLE

PROVIDENCE HEALTH &)	
SERVICES-WASHINGTON, a)	CASE NO. C09-1668TSZ
Washington nonprofit corporation; et al.,)	
)	
Plaintiffs,)	ORDER
)	
v.)	
)	
J. DAVID BENSON,)	
)	
Defendant.)	
_____)	

THIS MATTER comes before the Court on the response, docket no. 54, filed by plaintiffs Providence Health and Services – Washington and Providence Health Plan (collectively “PH&S-W”) to the Court’s Order to Show Cause, docket no. 53, why their claims should not be dismissed with prejudice in light of the Court’s Order Remanding the related case, Benson v. Providence Health & Servs., C10-941 (“Benson I”), to State court for lack of subject matter jurisdiction (the “Remand Order”). Having reviewed

PH&S-W's response, and the remaining record, the Court enters the following Order of partial summary judgment, dismissing some of PH&S-W's claims.

I. Background

In Benson I, which was before the Court on removal from state court, plaintiff J. David Benson ("Benson") called upon the Court to determine whether the Employee Retirement Income Security Act ("ERISA") applied to a health plan ("PN 501") allegedly administered by defendant PH&S-W.¹ After reviewing the extensive briefing of the parties on that issue, the Court determined that ERISA did not apply to PN 501. Benson I, C10-941, docket no. 25. Because ERISA was the sole basis for the Court's subject matter jurisdiction on removal, the Court remanded Benson I to state court. In the present case, which was filed after Benson I, PH&S-W seeks declaratory and injunctive relief against Benson, arguing again that ERISA applies to PN 501. Am. Compl., docket no. 11.

II. Discussion

After giving notice and a reasonable opportunity to respond, the Court may, sua sponte, enter summary judgment in favor of a non-moving party. Fed. R. Civ. P. 56(f)(1); Norse v. City of Santa Cruz, 2010 WL 5097749, *3 (9th Cir. 2010).

¹ There remains a factual dispute over which company, PH&S-W or its parent company, Providence Health and Services ("PH&S"), is the administrator of PN 501, and there is a genuine unresolved question as to whether the different Providence entities are operated as a single business in disregard of the corporate form. See, e.g., Friedman Decl., Exs. 2-3 (Rogers Dep., Exs. 2, 9), Ex. 4 (Young Dep. at 11, 32), docket no. 40.

01 **A. PH&S-W's Claims for Declaratory Relief**

02 PH&S-W's First through Seventh Causes of Action seek relief under the
03 Declaratory Judgment Act, 28 U.S.C. § 2201. Specifically, PH&S-W seeks alternative
04 declarations that ERISA applies to PN 501 because (1) PN 501 is not (nor has ever been)
05 an ERISA-exempt church plan under 29 U.S.C. § 1002(33) (First and Second Causes of
06 Action); (2) PH&S-W's formal ERISA election in May 2009 applies to PN 501
07 retroactively (Fourth and Fifth Causes of Action); or (3) PH&S-W has historically
08 treated PN 501 as though it were governed by ERISA, even though it was not (Sixth and
09 Seventh Causes of Action). Am. Compl., ¶¶ 8-16, 20-35, docket no. 11. PH&S-W's
10 Third Cause of Action seeks a declaration that the 2009 ERISA election was effective
11 and applies ERISA to PN 501 prospectively from the date of filing. *Id.* at ¶¶ 17-19.

13 PH&S-W argues that the Court's Remand Order in Benson I is not dispositive of
14 its claims in this case because here, unlike in that case, the Court has subject matter
15 jurisdiction. *See, e.g., Franchise Tax Bd. v. Const. Laborers' Vac. Trust*, 463 U.S. 1,
16 26-27 n.31 (1983) (holding that district courts have federal question jurisdiction over
17 declaratory judgment actions brought by an ERISA plan fiduciary to adjudicate a plan's
18 rights under ERISA); 29 U.S.C. § 1132(e)(1) (providing that federal courts have
19 exclusive jurisdiction over claims for injunctive relief under ERISA). PH&S-W
20 further argues the Court's Order in Benson I does not collaterally estop the Court from
21 reaching a different determination in this case. *Cf. Kricher v. Putnam Funds Trust*, 547
22 U.S. 633, 647 (2006). In addition, PH&S-W contends that its Third Cause of Action,

01 which relates to ERISA's prospective application following the May 2009 election, was
02 not at issue in Benson I.

03 While PH&S-W may be correct in its contention that the doctrine of collateral
04 estoppel does not procedurally bar the Court from reaching a different conclusion in this
05 case, the Court is not precluded from reaching the merits of the claims at issue.

06 Accordingly, for the reasons set forth in the Court's Remand Order in Benson I,
07 C10-941, docket no. 25, the Court concludes that, at least prior to May 2009, PN 501
08 was a church plan, exempt from ERISA, and neither the May 2009 ERISA election, nor
09 PH&S-W's historical treatment of PN 501 as an ERISA plan, operate to apply ERISA
10 retroactively. The Court concludes that summary judgment is appropriate on
11 PH&S-W's First, Second, Fourth, Fifth, Sixth, and Seventh Causes of Action.²
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13 As to PH&S-W's Third Cause of Action, however, the Court agrees that the
14 Remand Order in Benson I, did not address the validity of the May 2009 election or its
15 prospective application. Accordingly, the Court declines to dismiss PH&S-W's Third
16 Cause of Action. The Court will issue a separate Minute Order setting a briefing
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18 ² PH&S-W also contends that it is the plan administrator of PN 501, and consequently, since it initiated the present
19 lawsuit prior to being joined as a party in Benson I, which was initially brought against only PH&S, any claims that
20 Benson has against PH&S-W are compulsory counterclaims under Fed. R. Civ. P. 13(a) that must be adjudicated in
21 the present lawsuit. As an initial matter, the Court notes that, given the unresolved factual question as to which
22 Providence entity is the actual plan administrator, see, n.1, supra, it is not clear that Benson was on notice of his
obligation to bring counterclaims in this lawsuit. Moreover, at the time PH&S-W commenced this lawsuit,
Benson's claims were already pending in Benson I against PH&S, the party that Benson reasonably (and quite
possibly correctly) believed to be the proper defendant. Under Fed. R. Civ. P. 13(a)(2)(A), a pleader need not
state a claim that would otherwise be a compulsory counterclaim if, when the action was commenced, the claim
was the subject of another pending action. Fed. R. Civ. P. 13(a)(2)(A). Benson did not waive his right to pursue
his claims in Benson I by failing to raise them as counterclaims in this case.

01 schedule for the PH&S-W's motion for partial summary judgment on that claim. See
 02 Mot., docket no. 26.

03 **B. PH&S-W's Claims for Injunctive Relief**

04 PH&S-W also seeks an injunction under ERISA section 1132(a)(3)(B)
 05 precluding Benson from (1) pursuing his claims in Benson I until after he has exhausted
 06 his administrative remedies under ERISA (Eighth Cause of Action); and (2) pursuing
 07 any relief in Benson I for claims arising after the May 2009 election (Ninth Cause of
 08 Action). As the Court has already concluded that ERISA did not apply to PN 501 prior
 09 the May 2009 election, Benson has no duty to exhaust any administrative remedies
 10 under ERISA for claims arising before the election. Accordingly, summary judgment
 11 is appropriate on PH&S-W's Eighth Cause of Action. To the extent that Benson seeks
 12 relief in Benson I for claims arising after the May 2009 election, however, PH&S-W
 13 may be entitled to injunctive relief.³ Accordingly, the Court declines to enter summary
 14 judgment on PH&S-W's Ninth Cause of Action.
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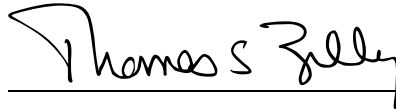
18 ³ In support of PH&S-W's contention that Benson is pursuing relief for claims arising after the May 2009 election,
 19 PH&S-W cites to Benson's answer, which denies that the election was valid and applies prospectively. Answer,
 20 ¶¶ 5, 19, docket no. 25. PH&S-W also cites to portions of the complaint in Benson I, which appears to seek relief
 21 for claims arising after the election. See Benson I, C10-941, Not. of Removal, Ex. 1 (2d Am. Compl. ¶ 8.2),
 22 docket no. 1-3 (claiming that defendants were unjustly enriched when they forced plan participants to tender over
 the proceeds of third party settlements, which in the case of Benson, took place after the May 2009 election). It is
 the Court's understanding that Benson has not challenged the validity of the ERISA election and has not sought
 relief for claims arising after the election. See Benson I, Order at 13 n.6, docket no. 25. Moreover, to the extent
 that the factual allegations in the class action complaint suggest that Benson's right of recovery is not typical of the
 class, that discrepancy raises a question that should be answered at the class certification stage of the case. See,
e.g., Wash. Sup. Ct. Civ. R. 23(a)(3) (requiring that a proposed class representative's claims be typical of the
 claims or defenses of the proposed class).

01 **III. Conclusion**

02 For the reasons set forth in the Court's Order for Remand in Benson I, C10-941,
03 docket no. 25, the Court, sua sponte enters partial summary judgment and DISMISSES
04 PH&S-W's First, Second, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action,
05 with prejudice. The Court declines to enter summary judgment as to PH&S-W's Third
06 and Ninth Causes of Action, and STRIKES in part the Order to Show Cause, docket
07 no. 53, as to those claims.

08 IT IS SO ORDERED.

09 DATED this 7th day of January, 2011.

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12 Thomas S. Zilly
13 United States District Judge
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